IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.694 OF 2007

In the matter of Reduction of Equity Share Capital of Fiat India Automobiles Pvt. Ltd.

Fiat India Automobiles Pvt. Ltd. .. Petitioner.

Mr.Hemant Sethi i/b Hemant Sethi & Co. for the petitioner.

CORAM : D.B.BHOSALE, J.
DATED : 28TH SEPTEMBER, 2007.
P.C.:

. Heard learned counsel for the petitioner.

2. By this petition, the petitioner-company is seeking sanction of this court to a reduction of the Share capital of the petitioner-company as approved in terms of the Special Resolution passed by its shareholders at the Extraordinary meeting held on 9th August, 2007. The petitioners have also prayed for approval of the "form of Minutes" under section 103(1) of the Companies Act and that the petitioner be exempted from inserting the word "And Reduced" to its name.

3. Upon perusal of the petition and material placed on record in support thereof it appears that

the Board of Directors at their meeting held on 2nd July, 2007 passed a resolution for the reduction of the issued, subscribed and paid-up share capital by adjusting the debit balance in Profit & Loss Account to the extent of Rs.16,95,06,67,300/- (Rupees Sixteen Hundred and Ninety Five Crores Six Lacs Sixty Seven Thousand Three Hundred) by cancellation of Rs.16,95,06,673/- (Rupees Sixteen Crores Ninety Five Lacs Six Thousand Six Hundred and Seventy Three) issued, subscribed and paid-up equity shares of the company held by Fiat Group Automobiles S.p.A., not represented by the available assets of the company. It appears that the Extraordinary general meeting of the shareholders held on 9th August, 2007 unanimously passed the resolution and approved the reduction.

4. The petitioner-company seems to have had incurred substantial losses on account of write off of investment in its subsidiary namely Fiat India Pvt. Ltd. and losses incurred on account of administrative and maintenance expenses prior to commencement of manufacturing activities as stated in paragraph 6 of the petition. The balance sheet of the company, therefore, according to the petitioner, needs restructuring under the provisions of the Companies Act to reflect the future prospects of the company in the most appropriate manner and propose to

adjust the issued, subscribed and paid up equity share capital of the company against the amount standing to the debit of the Profit and Loss Account as per the Balance Sheet of the company as at March 31, 2007 and any further loss, if any, to be incurred during the current financial year, not exceeding in totality Rs.16,95,06,67,300/- (Rupees Sixteen Hundred and Ninety Five Crores Six Lacs Sixty Seven Thousand Three Hundred). According to the company the reduction of share capital will facilitate petitioner company to serve its shareholders better and it will be in their long term interest.

5. The petitioner in paragraph 16 of the petition has made a categoric statement that the proposed reduction in capital does not involve any financial outlay/outgo on the part of the petitioner and as such will not cause any prejudice to the creditors of the petitioner. It has been also clarified that the reduction of capital does not involve either diminution of any liability in respect of unpaid capital or payment to any shareholder of any paid-up capital. It is further stated that the proposed adjustment would not in any way adversely affect the ordinary operations of the petitioner. The interest of the creditors of the company are, therefore, not prejudicially affected in any way

because the capital reduction does not involve any cash outflow or diminution of any liability in respect of unpaid share capital.

6. It appears that when the petition was admitted the petitioners were directed to advertise the date of hearing of the petition in two newspapers by order dated 24.8.2007. The petitioners have filed affidavit dated 7th September, 2007 stating that the advertisement has been published as aforestated. Nobody has come forward to oppose the prayers in the petition. Taking overall facts and circumstances of the case in view this petition is made absolute in terms of prayer clause (a) and (b). Prayer clause (a) and (b) read thus:

> "(a) that the reduction of share capital as approved by the petitioner in terms of the Special Resolution passed by the shareholders at the Extraordinary General Meeting held on 9th August, 2007 being Exhibit "F" hereto be confirmed and passed by this Hon'ble Court;
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> (b) that the "form of Minutes" under section 103(1) of the Act being Exhibit "G" to the petition be approved, the minutes relating to the reduction of the Share Capital of the petitioner so as to make the reduction effective and the petitioner be exempted from inserting the word "And Reduced" to its name."

. The company petition is disposed of.

(D.B.BHOSALE, J.)